UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

GALAXY TOWERS CONDOMINIUM ASSOCIATION,	:	
Respondent-Employer	:	Case No. 22-CA-030064
—and—	:	
LOCAL 124 RECYCLING, AIRPORT, INDUSTRIAL & SERVICE EMPLOYEES UNION,	:	
Charging Party-Union	:	

EXCEPTIONS OF CHARGING PARTY UNION, LOCAL 124 TO ADMINISTRATIVE LAW JUDGE DECISION

Charging Party, Local 124, Recycling, Airport, Industrial & Service Employees Union (hereinafter, "the Union" or "Local 124"), by its attorneys, Barnes, Iaccarino & Shepherd LLP, hereby takes the following exceptions to the Decision of Administrative Law Judge Steven Davis (hereinafter, "the ALJD") dated September 25, 2012 :

1. The ALJ erred in concluding that the subcontracting of most bargaining unit work did not violate §§ 8(a)(1) and 8(a)(5) of the NLRA (ALJD at 20) for the reasons set forth in the following exceptions.

2. The ALJ never addressed the question of whether the Union's alleged contractual agreement to the right of the Employer, Galaxy Towers Condominium Association ("GTCA" or "Galaxy") to subcontract without restriction ("alleged subcontracting agreement") was effective at the time implemented on August 1, 2011. The ALJ failed to find that the alleged subcontracting agreement supposedly embodied in the January 2007 MOA was never agreed by the parties to be effective, including the key date of August 1, 2011. Such a finding is required by other acknowledgment in the same ALJD of that the alleged subcontracting agreement was a

tentative agreement. See ALJD at 7 regarding the Board Settlement Agreement concerning "tentative agreements reached with Galaxy concerning subcontracting." See also ALJD at 17. To find that the alleged subcontracting agreement was final and binding and effective is to read the word "tentative" right out of the Board Settlement Agreement.

3. The ALJ failed to note the penchant of Galaxy to engage in bargaining by trickery as opposed to good faith, although noting that Galaxy counsel Ploscowe had done just such overreaching by insertion of a wholly un-discussed forfeiture of union visitation in a clause that was previously tentatively agreed according to Ploscowe's own records without any such oppressive forfeiture. See ALJD at 5. The ALJ failed to consider this bad faith as being a factor in Galaxy counsel Ploscowe's similar insertion of the subcontracting clause at issue into the draft contract without there being any evidence whatsoever that the matter had ever been discussed during bargaining meetings.

4. Although noting various actions and behaviors of Galaxy contradictory to the existence at the critical time (August 1, 2011) of an effective subcontracting agreement *per se*, the ALJ failed to draw the conclusion that Galaxy indeed had no effective contractual right. For example, Galaxy agreed in 2009 to have an arbitrator decide if subcontracting rights were included within the expiring 2007 MOA. See ALJD at 8. For another example, Galaxy counsel Kingman bargained with Union representatives DeAngelis and Bernardone for a subcontracting rights clause in 2010. See ALJD at 8. For another example, Galaxy engaged in lengthy bargaining regarding the decision to subcontract during 2011. See ALJD at 9 through 12. The ALJ noted that "Kingman asked the Union for an alternative proposal which would generate similar savings." (ALJD at 10) In other words, the Galaxy invited decision bargaining. Those are not the actions of a party that believes it already has since 2007 unlimited contractual

subcontracting rights. By contrast, during those 2011 bargaining sessions, the Union consistently maintained that there was no effective subcontracting rights agreement and insisted on continuing to bargain regarding the decision. "Kingman noted that the Union's position at all times was that the Respondent should not subcontract any work." ALJD 11:14-15. See also ALJD at 11:30-31; 12:5-6;[1] 12:14-15; 12:40-42.

5. Although finding correctly in Part II of the ALJD failure and refusal to bargain by the Galaxy, as well as unlawful declaration of impasse and concomitant unlawful implementation, the ALJ failed to find that the failure to bargain concerned subcontracting, that the supposed impasse concerned subcontracting, and that what was thereupon implemented was subcontracting.

> "Accordingly, the Union was still willing to negotiate. It was, at that time, exploring ways in which different types of severance packages for the current employees would cause the Respondent to abandon its interest in subcontracting. Therefore, there was a willingness and movement by the Union toward reaching agreement." ALJD at 16:4-7.

The ALJD identifies nothing specific other than subcontracting as having been implemented upon the unlawfully-declared impasse, and the ALJ should accordingly have found, as night follows day, that subcontracting was unlawfully, unilaterally implemented.

Dated: Elmsford, New York
November 19, 2012

Respectfully submitted,
BARNES, IACCARINO & SHEPHERD LLP
Attorneys for Union

Steven H. Kern, Esq.
258 Saw Mill River Road
Elmsford, NY 10523
(914) 592-5740

[1] "Clearly, at that point, the Union was insisting that it never agreed to subcontracting."

CERTIFICATE OF SERVICE

I hereby certify that on November 19, 2012, the within Exceptions of Charging Party Union, Local 124 to Administrative Law Judge Decision were served by electronic mail as follows:

Benjamin W. Green, Esq.
National Labor Relations Board
Region 22
20 Washington Place –5th Floor
Newark, NJ 07102-3115
Benjamin.Green@nlrb.gov

Christopher Murphy, Esq.
117-119 North Olive Street
Media, PA 19063
cjmlabor@gmail.com

Michael E. Lignowski, Esq.
Morgan Lewis & Brockius LLP
1701 Market Street
Philadelphia, PA 19103
mlignowski@morganlewis.com

Dated: Elmsford, New York
November 19, 2012

Steven H. Kern